



## Senate

General Assembly

**File No. 226**

February Session, 2018

Substitute Senate Bill No. 435

*Senate, April 4, 2018*

The Committee on General Law reported through SEN. LEONE of the 27th Dist. and SEN. WITKOS of the 8th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT CONCERNING THE SALE AND USE OF CONSUMER GRADE FIREWORKS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2018*) (a) Notwithstanding the  
2       provisions of subsection (a) of section 29-357 of the general statutes, as  
3       amended by this act, any person offering for sale, exposing for sale,  
4       selling at retail or possessing with intent to sell consumer fireworks, as  
5       defined in 27 CFR 555.11, shall hold a federal fireworks license issued  
6       pursuant to 18 USC Section 843 and a license issued by the Department  
7       of Consumer Protection pursuant to section 2 of this act.

8       (b) A person twenty-one years of age or older may use or explode  
9       consumer fireworks between six o'clock p.m. and eleven o'clock p.m.  
10      on any day, and such person may use or explode consumer fireworks  
11      between eleven o'clock p.m. and midnight on the thirty-first day of  
12      December and for the first hour of New Year's Day, in addition to said  
13      hours.

14       Sec. 2. (NEW) (*Effective October 1, 2018*) (a) The Department of  
15 Consumer Protection shall issue an annual license to sell consumer  
16 fireworks to an applicant who: (1) Is twenty-one years of age or older,  
17 (2) holds a valid federal fireworks license issued pursuant to 18 USC  
18 Section 843, (3) has not been convicted of a felony, (4) has not been  
19 convicted of an offense or violation of a state, federal or municipal law  
20 or regulation involving the misuse of fireworks or explosives, (5)  
21 maintains public liability and product liability insurance with a  
22 minimum coverage amount of one million dollars, to cover losses,  
23 damages or injuries that might ensue to persons or property as a result  
24 of selling consumer fireworks, and (6) pays an initial annual license fee  
25 of five thousand dollars or an annual renewal fee of two thousand five  
26 hundred dollars.

27       (b) A separate license shall be required for each location at which an  
28 applicant intends to sell consumer fireworks. An applicant granted a  
29 license to sell consumer fireworks pursuant to this section shall store  
30 and sell such fireworks only in a permanent facility in accordance with  
31 NFPA Section 1124, 2006 edition.

32       Sec. 3. (NEW) (*Effective October 1, 2018*) (a) As used in this section:

33       (1) "Consumer fireworks" has the same meaning as defined in 27  
34 CFR 555.11;

35       (2) "Consumer fireworks retailer" means the holder of a license to  
36 sell consumer fireworks issued pursuant to section 2 of this act; and

37       (3) "First sale of consumer fireworks" means the initial sale of  
38 consumer fireworks in this state.

39       (b) On and after October 1, 2018, each person or entity that sells  
40 consumer fireworks to a consumer fireworks retailer shall pay a tax to  
41 the state on the first sale of consumer fireworks, at the rate of five per  
42 cent of the average wholesale price, as determined by the Department  
43 of Revenue Services. The Commissioner of Revenue Services shall  
44 prescribe the form and manner of the remittance of such tax and any

45 return filing the commissioner deems necessary.

46 (c) For calendar months commencing on and after October 1, 2018,  
47 the commissioner shall deposit into the consumer fireworks account,  
48 established pursuant to section 4 of this act, the entire amount received  
49 by the state from the tax imposed under this section.

50 (d) Any tax due and unpaid under this section shall be subject to the  
51 penalties and interest established in section 12-547 of the general  
52 statutes and the amount of such tax, penalty or interest, due and  
53 unpaid, may be collected under the provisions of section 12-35 of the  
54 general statutes.

55 (e) The provisions of sections 12-548 and 12-550 to 12-555b,  
56 inclusive, of the general statutes shall apply to the provisions of this  
57 section in the same manner and with the same force and effect as if the  
58 language of said sections had been incorporated in full into this section  
59 and had expressly referred to the tax imposed under this section,  
60 except to the extent that any such provision is inconsistent with a  
61 provision of this section.

62 Sec. 4. (NEW) (*Effective October 1, 2018*) On and after October 1, 2018,  
63 there is established an account to be known as the "consumer  
64 fireworks account" which shall be a separate, nonlapsing account  
65 within the General Fund. The account shall contain any moneys  
66 required by law to be deposited in the account. Moneys in the account  
67 shall be disbursed, in accordance with a distribution formula  
68 determined by the Commissioner of Revenue Services, to the  
69 firefighters cancer relief account established pursuant to section 7-313h  
70 of the general statutes and the state fire school training and education  
71 extension account established pursuant to section 7-323p of the general  
72 statutes.

73 Sec. 5. Subsection (a) of section 29-357 of the general statutes is  
74 repealed and the following is substituted in lieu thereof (*Effective*  
75 *October 1, 2018*):

76 (a) Except as provided in sections 1 and 2 of this act and subsection  
 77 (b) of this section, no person, firm or corporation shall offer for sale,  
 78 expose for sale, sell at retail or use or explode or possess with intent to  
 79 sell, use or explode any fireworks. A person who is sixteen years of age  
 80 or older may offer for sale, expose for sale, sell at retail, purchase, use  
 81 or possess with intent to sell or use sparklers or fountains of not more  
 82 than one hundred grams of pyrotechnic mixture per item, which are  
 83 nonexplosive and nonaerial, provided (1) such sparklers and fountains  
 84 do not contain magnesium, except for magnalium or magnesium-  
 85 aluminum alloy, (2) such sparklers and fountains containing any  
 86 chlorate or perchlorate salts do not exceed five grams of composition  
 87 per item, and (3) when more than one fountain is mounted on a  
 88 common base, the total pyrotechnic composition does not exceed two  
 89 hundred grams.

90 Sec. 6. (NEW) (*Effective October 1, 2018*) The State Fire Marshal shall  
 91 enforce the provisions of section 1 and subsection (b) of section 2 of  
 92 this act and shall conduct an inspection of the premises where  
 93 consumer fireworks are to be sold, stored and offered for sale prior to  
 94 any person offering such consumer fireworks for sale to the public at  
 95 retail.

96 Sec. 7. (NEW) (*Effective October 1, 2018*) (a) A person who offers or  
 97 exposes for sale, sells at retail or possesses consumer fireworks with  
 98 intent to sell in violation of subsection (a) of section 1 of this act shall  
 99 have committed an unfair or deceptive act or practice pursuant to  
 100 subsection (a) of section 42-110b of the general statutes.

101 (b) A person who offers for sale, exposes for sale, sells at retail,  
 102 possesses with intent to sell, or possesses, uses or explodes consumer  
 103 fireworks in violation of subsection (a) or (b) of section 1 of this act  
 104 shall be guilty of a class C misdemeanor.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2018	New section

Section 1	October 1, 2018	New section
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Sec. 2	<i>October 1, 2018</i>	New section
Sec. 3	<i>October 1, 2018</i>	New section
Sec. 4	<i>October 1, 2018</i>	New section
Sec. 5	<i>October 1, 2018</i>	29-357(a)
Sec. 6	<i>October 1, 2018</i>	New section
Sec. 7	<i>October 1, 2018</i>	New section

**GL**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 19 \$</b>	<b>FY 20 \$</b>
Consumer Protection, Dept.	GF - Revenue Gain	Up to 30,000	Up to 15,000
Department of Emergency Services and Public Protection	Consumer Fireworks Account - Revenue Gain	350,000	475,000
Department of Revenue Services	Various - Revenue Gain	375,000	500,000
Department of Revenue Services	GF - Cost	60,000	None
Dept. of Administrative Services	GF - Cost	112,526	112,526
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	40,880	40,880
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund; Various=Various

### **Municipal Impact:** None

### **Explanation**

This bill expands the type of fireworks that may be sold and used in the state and results in a cost to the Department of Revenue Services, Department of Administrative Services (DAS), and the State Comptroller as well as a revenue gain to the state. In FY 19 the total cost to the state is approximately \$213,406 and the total revenue gain is approximately \$755,000.

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.33% of payroll in FY 19 and FY 20.

**Sections 1 and 2** result in an approximately \$30,000 revenue gain in FY 19 and \$15,000 revenue gain in FY 20 to the Department of Consumer Protection (DCP) due to two new licensing fees for entities who sell consumer fireworks (a \$5,000 initial fee and \$2,500 annual renewal fee). It's anticipated that few entities will apply for the license due to the high fees and the requirement to also have a federal fireworks license.

**Section 3** results in a revenue gain of \$350,000 in FY 19 and \$475,000 annually thereafter by applying a 5% excise tax on consumer fireworks. The revenue generated in this section would be deposited in a "consumer fireworks account" established in Section 4 of the bill.

The bill will result in a sales tax revenue gain of \$375,000 in FY 19 and \$500,000 annually thereafter by expanding the types of fireworks that may be sold. This revenue would be deposited in the General Fund and other state funds<sup>2</sup> that receive sales tax transfers, not the "consumer fireworks account."

This section results in a one-time cost of \$60,000 in FY 19 to the Department of Revenue Services to establish the new excise tax within the online Taxpayer Service Center (\$25,000) and for programming costs to warehouse the tax form data in the agency's Integrated Tax Administration System (\$35,000).

**Section 4** results in a revenue gain to the Department of Emergency Services and Public Protection, as the bill requires that the funds within the newly created consumer fireworks account are to be disbursed to the firefighter's cancer relief account and the state fire school training and education extension account.

**Section 5** consists of technical changes and results in no fiscal impact.

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<sup>2</sup> Current law requires a diversion of a portion of the sales tax generated into (1) the Special Transportation Fund and (2) the Municipal Revenue Sharing Account beginning in FY 20. The general sales and use tax rate, from which the diversion occurs, remains at 6.35%.

**Section 6** requires the State Fire Marshal to conduct an inspection of the premises where consumer fireworks are to be sold, stored and offered for sale prior to any person offering such consumer fireworks for sale to the public at retail. The Department of Administrative Services (DAS) will require two Fire & Life Safety Specialist positions (\$56,263 for salary and \$20,440 for fringe per position) to administer these new safety measures.

**Section 7** results in potential revenue gain from enforcing new violations associated with the sale, possession, and use of fireworks. Any potential revenue gain will be partially offset by revenue loss from current laws, which makes it illegal to sell or use consumer fireworks. In FY 17, there were 40 violations that resulted in \$1,000 of fines.

This section also makes any violation of section 1 subsection (a) of this bill an unfair trade practice and results in no impact to the state. Few violations are expected and DCP has the expertise to investigate these claims.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.



**OLR Bill Analysis****sSB 435*****AN ACT CONCERNING THE SALE AND USE OF CONSUMER GRADE FIREWORKS.*****SUMMARY**

This bill expands the types of fireworks that may be sold and used in the state to include any consumer fireworks allowed under federal law. Current state law only allows sparklers and fountains, which are non-explosive and non-aerial (CGS § 29-357(a)).

The bill allows those age 21 or older to use or explode consumer fireworks from 6:00 p.m. to 11:00 p.m. and additionally from 11:00 p.m. on New Year's Eve until 1:00 a.m. on New Year's Day.

It also requires retailers to have a (1) federal fireworks license and (2) Department of Consumer Protection (DCP) license, which the bill creates. The initial DCP license fee is \$5,000 with a \$2,500 annual renewal fee.

Under the bill, licensees may store and sell consumer fireworks only from a permanent facility in accordance with the National Fire Protection Section 1124, 2006 edition. A separate license is required for each location that sells the fireworks. The bill requires the State Fire Marshal to (1) inspect the premises where the fireworks are sold, stored, and offered for retail sale to the public and (2) enforce the provisions prohibiting those under age 21 from using the fireworks and limiting the times fireworks may be used.

The bill imposes a tax on the initial sale of fireworks in the state at the rate of 5% of the average wholesale price. Tax revenue must be put into a consumer fireworks account that the bill establishes and distributed to the firefighters cancer relief fund and the state fire

school training and education extension account.

The bill deems unlicensed sellers who offer or expose for sale, sell at retail, or possess consumer fireworks with intent to sell to have committed (1) an unfair or deceptive act or practice (CUTPA, see BACKGROUND) violation and (2) a class C misdemeanor (punishable by up to three months imprisonment, up to a \$500 fine, or both). Underage users or those who use fireworks at unpermitted times have also committed a class C misdemeanor.

EFFECTIVE DATE: October 1, 2018

### **CONSUMER FIREWORKS**

Under the bill, “consumer fireworks” means any small firework device designed to produce visible effects by combustion and which complies with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission (27 C.F.R. § 555.11).

### **LICENSING**

The bill requires any person offering for sale, exposing for sale, selling at retail, or possessing consumer fireworks with intent to sell to hold a federal license issued by the attorney general (18 U.S.C. § 843) and a DCP license.

Under the bill, in order to receive a DCP license, applicants must (1) be at least age 21, (2) not be convicted of a felony or misusing fireworks or explosives, and (3) maintain at least \$1 million of public and product liability insurance to cover losses, damages, or injuries that might happen to a person or property because of selling consumer fireworks.

### **TAX**

The bill imposes a tax on fireworks sales at the rate of 5% of the average wholesale price, as determined by the Department of Revenue Services (DRS). The DRS commissioner must prescribe the form and manner of remitting the tax and any return filing he deems necessary.

The bill requires the DRS commissioner, for the months on and after October 1, 2018, to deposit the tax into the consumer fireworks account (see below).

Any such tax due and unpaid is subject to (1) a penalty equal to 10% of the amount due and unpaid or \$50, whichever is greater and (2) 1% interest per month or fraction thereof, from the due date. Such tax, penalty, or interest that is due and unpaid, may be collected under the procedures the state uses to collect such money (e.g., warrant on real or personal property).

In addition, the bill applies to the tax the same enforcement, liability, and appeal process requirements established in statute for other taxes and requires them to be adapted accordingly unless they are inconsistent with the bill's tax provisions. Under these requirements, the DRS commissioner can, among other things, (1) assess tax deficiencies where necessary; (2) require the entities to keep certain records and examine all of their records; (3) administer oaths, subpoena witnesses, and receive testimony; and (4) require a security deposit to ensure compliance in some cases. The entities can file for a refund for tax overpayments, request a hearing on the amount of taxes they are required to pay, and appeal the hearing decision if aggrieved. Lastly, DRS may impose an additional penalty for willful violations or filing fraudulent returns.

## **CONSUMER FIREWORKS ACCOUNT**

The bill creates the consumer fireworks account, as a separate, nonlapsing General Fund account. The account must contain any money required by law to be deposited into the account. The DRS commissioner must determine a distribution formula to disburse money from the account into the firefighters cancer relief account and the state fire school training and education extension account.

## **BACKGROUND**

### **CUTPA**

The law prohibits businesses from engaging in unfair and deceptive

acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 12      Nay 5      (03/20/2018)